IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4644 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAJAPATI PRABHUBHAI DHULABHAI - Petitioner(s)

Versus

GENERAL MANAGER & 1 - Respondent(s)

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Appearance :
MR PM THAKKAR for Petitioner(s) : 1,
MR KV GADHIA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order of the respondents

terminating the service of the petitioner on 06.07.1990 as arbitrary, illegal, discriminatory, against the provisions of law and violative of articles 14 and 16 of the Constitution of India. The petitioner has also prayed for the direction to the respondent authority to reinstate the petitioner with full back wages and all consequential benefits with retrospective effect as if the order of termination was not passed.

2. It is the case of the petitioner that the petitioner was appointed as a Master Potter at Vanakbori by the respondent no.1 on 25.11.1987 on temporary basis in the pay scale of Rs.900/- per month. The work of the petitioner was to impart training of making clay utensiles etc. to the trainees. It is also the case of the petitioner that the service of the petitioner was abruptly terminated on 06.07.1990 without any justification and without issuing any prior notice. The petitioner was terminated without following due process of law and in disregard of the fact that the work was still going on on that post. It is

also the case of the petitioner that the impugned order of the respondents terminating the service of the petitioner was also against the provisions of Bombay Civil Service Rules which were applicable to the employees of the State. It is submitted that as per Rule 33 (1) (a) and (b) before terminating service of the employee, one month's notice must be given. It is further stated that the payment of notice pay or one month's notice is a pre-condition of the termination of service forthwith. Hence, the impugned order is bad in eye of law and violative of provisions contained in BCSR Rules. It is also stated that the impugned order is also violative or provisions contained in Section 25 of Industrial Disputes Act.

3. The affidavit-in-reply is filed on 29.08.2002. The petition was challenged on various grounds. Some of the grounds are raised by the respondent authority that the petitioner has not come with the clean hands before this Court. He suppressed the material facts as prior to filing of the present petition, the petitioner has approached Civil Court

(JD), Balasinor on 04.03.1991 being Civil Suit No.23 of 1991 wherein it is stated that petitioner has joined with the institute in 1987 with the salary of Rs.900/ p.m. Thereafter, gradually his salary was increased and he was getting Rs.1800/- p.m. at the time of filing the Civil Suit i.e. on 04.03.91. It shows that petitioner was in service till March,1991. Alongwith the said affidavit in reply copy of Civil Suit is annexed.

4. After having gone through the affidavit-in-reply as well as the plaint of the Civil Suit and after having heard the learned advocate for the petitioner, it appears that the petitioner has not come with clean hands before this Court challenging the termination order. As such the petitioner's service was not terminated on 06.07.1990. The petitioner has himself stated in Civil Suit that the petitioner was in service till March, 1991 and thereby petitioner has suppressed correct facts before this Court and it appears that only after filing of the aforesaid Civil Suit, the present petition is filed before this Court praying for

equitable relief from this Court. Petitioner should have come with clean hands then he should have stated the correct facts in the petition. However, this has not been done. The court is, therefore, not inclined to grant any relief in this petition. Petition is dismissed only on this ground as he suppressed material facts from this Court. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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